



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

May 19, 2003

The Honorable Michael G. Oxley
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your recent correspondence regarding the Terrorism Risk Insurance Act of 2002 (TRIA). You wrote to ask how Treasury understood the statute's use of the term "act of war" in connection with the identification of acts of terrorism covered under the provisions of the statute. More specifically, you inquired whether the "declared war" exclusion would apply to acts committed in connection with the hostilities in Iraq.

It is our view that the war exclusion applies only to acts of terrorism committed in connection with a formal, congressionally declared war. As you note in your letter, section 102(a)(1)(B) of TRIA states "no act shall be certified by the Secretary as an act of terrorism if...the act is committed as part of the course of a war declared by the Congress..." The phrase "war declared by the Congress" is not defined in the Act. However, Article I, section 8, clause 11 of the Constitution grants Congress the exclusive authority to declare war. Congress has done so on five occasions, the most recent of which occurred in 1941 at the outset of World War II. Most other American military actions have been conducted pursuant to constitutional authorities of the President connected with his role as commander-in-chief, and while many of these have also enjoyed explicit Congressional support, they have not been authorized by a formal declaration of war. For example, the "Authorization for Use of Military Force Against Iraq Resolution of 2002," (P.L. 107-243) gave the President authority to conduct military operations, but it was not a formal declaration of war.

In enacting the "declared war" exclusion provision of TRIA, it appears that Congress sought to differentiate between terrorist acts committed in connection with a formally declared war, and other terrorist acts committed by or on behalf of any foreign entity or foreign power short of a declared war. Therefore, it is our interpretation of the statute that a terrorist act committed in the United States in connection with the recent hostilities in Iraq would not be excluded from coverage under TRIA solely by operation of the "declared war" exclusion.

It is important to note that, in the case of the Iraq situation, this interpretation of the "declared war" exclusion may not apply to private insurance contracts, which may contain their own limitations and exclusions. This letter is not meant to interpret or provide any opinion as to such privately negotiated limitations and exclusions.

Thank you again for your correspondence on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Snow". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John W. Snow

MICHAEL G. OXLEY, OH, CHAIRMAN

JAMES A. LEACH, VA
DOUG WEREUTER, NE
RICHARD H. BAKER, LA
SPENCER BACHUS, AL
MICHAEL N. CASTLE, DE
PETER T. KING, NY
EDWARD R. ROYCE, CA
FRANK D. LUCAS, OK
ROBERT W. NEY, OH
SUE W. KELLY, NY
Vice Chair
RON PAUL, TX
PAUL E. GILLMOOR, OH
JIM AVON, KS
STEVEN C. LATOURETTE, OH
DONALD A. MANZULLO, IL
WALTER B. JONES, JR., NC
DOUG GSE, CA
JUDY BIGGERT, IL

ROBERT U. POSTER III
STAFF DIRECTOR

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

EXECUTIVE SECRET

April 11, 2003

2003 APR 14

DEPARTMENT OF
THE TREASURY

BARNEY FRANK, MA, RANKING MEMBER

PAUL E. KANJORSKI, PA
MAXINE WATERS, CA
CAROLYN B. MALONEY, NY
LUIS V. GUTIERREZ, IL
NYCIA M. VELAZQUEZ, NY
MELVIN L. WATT, NC
GARY L. ACKERMAN, NY
DARLENE MOOLEY, OR
JULIA CARSON, IN
BRAD SCHERMAN, CA
GREGORY W. MECKS, NY
BARBARA LEE, CA
JAY INSLEE, WA
DENNIS MOORE, KS
CHARLES A. CONZALEZ, TX
MICHAEL E. CAPUANO, MA

HAROLD E. FORD, JR., TN
RUBEN HINOJOSA, TX
KEN LUCAS, KY
JOSEPH CROWLEY, NY
WILLIAM LACY CLAY, MO
STEVE ISRAEL, NY
MIKE ROSS, AR
CAROLYN MCCARTHY, NY
JOE BACA, CA
JIM MATHESON, UT
STEPHEN F. LYNCH, MA
BRAD MILLER, NC
RAMM EMANUEL, IL
DAVID SCOTT, GA
ARTHUR DAVIS, AL
BERNARD SANDERS, VT

The Honorable John W. Snow
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Snow:

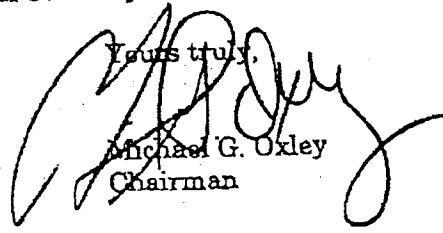
In light of the Administration's ongoing effort to strengthen our domestic economy while our country fights to liberate Iraq, I would like to ask your help in clarifying a provision of the Terrorism Risk Insurance Act of 2002 (TRIA).

The express purpose of TRIA is to "protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk". A critical part of avoiding market disruptions is providing certainty to the insurance markets regarding their loss exposure to potential attacks, including a common understanding of what acts are covered by the Federal backstop. Some commentators have recently questioned whether an action against covered U.S. risks committed at the direction of the current Iraqi regime would be considered "an act of terrorism" or "an act of war" under TRIA.

TRIA clearly distinguished between acts of terrorism and war by providing in section 102(a)(1)(B) that "no act shall be certified by the Secretary as an act of terrorism if— (i) the act is committed as part of the course of a war declared by the Congress...." Since Congress has not made a declaration of war as part of the liberation of Iraq, I would appreciate your clarification regarding how you would interpret the statute's distinction between acts of war and terrorism and whether it is your understanding that the declared war exclusion would not apply in regard to acts committed in connection with the current hostilities with the Iraqi government.

Thank you in advance for providing guidance on this subject. Please do not hesitate to contact me or my staff if we can be of any assistance.

Yours truly,


Michael G. Oxley
Chairman

MGO/rmg

cc: Barney Frank, Ranking Member